

REMARKS

Claims 1, 8 and 13 have been amended. Claims 2-7 and 9-12 remain in the application unchanged. Reexamination and reconsideration of the claims are respectfully requested.

In the Office Action dated July 12, 2002, claims 1-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Meincer, U.S. Patent No. 3,788,462, in view of Lawson, U.S. Patent No. 3,730,417. Applicants respectfully traverse the rejection for the reasons discussed below.

Claims 1, 8 and 13 were amended above to clarify that the base is "disposable/recyclable". Support for this amendment may be found in Applicants' Specification at least at page 5, lines 9-16.

The test for obviousness under 35 U.S.C. §103 is whether the claimed invention would have been obvious to those skilled in the art in light of the knowledge made available by the reference or references. *In re Donovan*, 184 USPQ 414, 420, n. 3 (CCPA 1975). It requires consideration of the entirety of the disclosures of the references. *In re Rinehart*, 189 USPQ 143, 146 (CCPA 1976). All limitations of the claims must be considered. *In re Boe*, 184 USPQ 38, 40 (CCPA 1974). In making a determination as to obviousness, the references must be read without benefit of Applicants' teachings. *In re Meng*, 181 USPQ 94, 97 (CCPA 1974). In addition, the propriety of a §103 rejection is to be determined by whether the reference teachings appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed substitution, combination, or other modifications. *In re Lintner*, 173 USPQ 560, 562 (CCPA 1972). A reference which teaches away from the Applicants' invention may not

properly be used in framing a 35 U.S.C. §103 rejection of Applicants' claims. See *United States v. Adams*, 148 USPQ 479, 484 (1966).

It is clearly established in the case law that a change in the mode of operation of a device which renders that device inoperative for its stated utility as set forth in the cited reference renders the reference improper for use to support an obviousness-type rejection predicated on such a change. See, e.g., *Diamond International Corp. v. Walterhoefer*, 289 F.Supp. 550, 159 USPQ 452, 460-61 (D.Md. 1968); *Ex parte Weber*, 154 USPQ 491, 492 (Bd.App. 1967). In addition, any attempt to combine the teaching of one reference with that of another in such a manner as to render the invention of the first reference inoperative is not permissible. See, e.g., *Ex parte Hartmann*, 186 USPQ 366 (Bd.App. 1974); and *Ex parte Sternau*, 155 USPQ 733.

A basic mandate inherent in §103 is that a piecemeal reconstruction of prior art patents shall not be the basis for a holding of obviousness. It is impermissible within the framework of §103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. *In re Kamm*, 172 USPQ 298, 301-302 (CCPA 1972). Phrased somewhat differently, the fact that inventions of the references and of Applicants may be directed to concepts for solving the same problem does not serve as a basis for arbitrarily choosing elements from references in an attempt to fashion Applicants' claimed invention. *In re Donovan*, 184 USPQ 414, 420 (CCPA 1975).

Meincer, U.S. Patent No. 3,788,462 (hereinafter "Meincer '462") is directed to a load (26) of packages which is adapted to be used with or without a

conventional pallet (10). When removed from the pallet (10), the lowermost layers (16, 18) of the load (26) act as a "base". The bottom layer (16) of the load (26) is palletized to have a smaller surface area than the next adjacent layer (18), so as to provide ledges (20) to support the forks of a forklift. Both the bottom layer (16) and the next adjacent layer (18) are wrapped in heat-shrinkable thermoplastic material (12, 14) so that these layers (16, 18) remain together and the ledges (20) stay intact when the forklift lifts the load (26).

Lawson, U.S. Patent No. 3,730,417 (hereinafter "Lawson '417") is directed to an outer container (12) having openings (14, 16) adapted to receive forks of a forklift. On to the bottom, inside surface of the outer container (12) are a plurality of spacers (60) which space an inner container (46) away from the bottom surface of the outer container (12) so that the forklift forks can be inserted into the outer container (12) beneath the inner container (46). The spacers (60) are only adhered to the bottom, inside surface of the outer container (12); the spacers (60) are not adhered to either the inner container (46) or a load inside the inner container (46).

Neither of the cited references, either singly or in combination, discloses or suggests Applicants' claim 1:

1. A pallet for supporting a load of packages comprising multiple layers, said pallet comprising:

- a) a support structure comprising flexible film wrapped around at least one of said multiple layers around a first axis and a second axis, said first axis being generally perpendicular to said second axis, whereby said flexible film covers at least a majority of said at least one of said multiple layers; and

- b) a disposable/recyclable base adhered to said flexible film which is adapted to receive forks of a forklift.

As noted above, Meincer '462 is directed to a load (26) of packages which is adapted to be used with or without a conventional pallet (10). When removed from the pallet (10), the lowermost layers (16, 18) of the load (26) act as a "base". Thus, at any given time, the "base" of Meincer '462 is either a conventional pallet (10) or the lowermost layers (16, 18) of the load, neither of which is adhered to flexible film wrapped around at least one of the layers of the load, as claimed by Applicants in claim 1. Furthermore, neither the conventional pallet (10) nor the lowermost layers of the load of Meincer '462 are disposable/recyclable, as claimed by Applicants in claim 1.

Lawson '417 does nothing to make up for the deficiencies of Meincer '462. Also as noted above, Lawson '417 is directed to an outer container (12) having openings (14, 16) adapted to receive forks of a forklift. A plurality of spacers (60) are adhered to the bottom, inside surface of the outer container (12). However, the spacers (60) are not adhered to either the inner container (46) or to a load inside the inner container (46). Thus, Lawson '417 does not disclose or suggest a disposable/recyclable base adhered to flexible film wrapped around at least one layer of the load, as claimed by Applicants in claim 1. Nor does Lawson '417 disclose or suggest a support structure comprising flexible film wrapped around at least one layer of the load around perpendicular axes as claimed by Applicants in claim 1.

Furthermore, the combination of Meincer '462 and Lawson '417 would not produce Applicants' claimed invention. On pages 2-3 of the Office Action, the Examiner stated, "It would have been obvious... to modify the structure of Meincer to include an adhesively mounted base structure, as taught by Lawson since such structure is used in the same intended purpose of providing a unitary package structure..." (emphasis added). However, Applicants assert that the spacers (60) of Lawson '417 are not used for the same intended purpose as either the pallet (10) or the lowermost layers (16, 18) of Meincer '462. As noted above, the spacers (60) of Lawson '417 are utilized to space an inner container (46) away from the bottom surface of an outer container (12) so that forklift forks can be inserted into the outer container (12) beneath the inner container (46). On the contrary, the pallet (10) and lowermost layers (16, 18) of Meincer '462 are alternately utilized to provide a base which is adapted to receive forks of a forklift. The combination of these references would not produce a pallet having a support structure and a disposable/recyclable base as claimed by Applicants in claim 1.

In view of the above, Applicants believe that claim 1 is clearly allowable over the cited art. Claims 2-7 are believed to be allowable as depending, either directly or indirectly, from an allowable base claim, and further in view of the novel and nonobvious combination of elements presented therein.

Applicants' claim 8 is believed to be allowable in that neither of the cited references, either singly or in combination, disclose or suggest:

8. A method for producing a pallet for supporting a load of packages comprising multiple layers, said method comprising:

- a) wrapping at least one of said multiple layers with a flexible film around a first axis;
- b) wrapping said at least one of said multiple layers with a flexible film around a second axis which is generally perpendicular to said first axis;
- c) adhering a disposable/recyclable base to said flexible film.

The arguments above relative to claim 1 are herein renewed. For the same reasons, Applicants believe that claim 8 is allowable over the cited art. Claims 9-12 are believed to be allowable as depending from an allowable base claim, and further in view of the novel and nonobvious combination of elements presented therein.

Applicants' claim 13 is believed to be allowable in that neither of the cited references, either singly or in combination, disclose or suggest:

13. A pallet for supporting a load of packages comprising multiple layers, said pallet comprising:

- a) support means for supporting said load of packages, said support means comprising flexible film wrapped around at least one of said multiple layers around a first axis and a second axis, said first axis being generally perpendicular to said second axis, whereby said flexible film covers at least a majority of said at least one of said multiple layers; and
- b) disposable/recyclable base means adhered to said support means for receiving forks of a forklift.

The arguments above relative to claim 1 are herein renewed. For the same reasons, Applicants believe that claim 13 is allowable over the cited art.

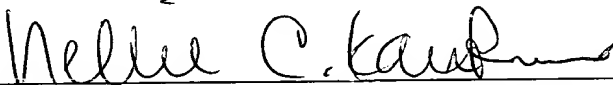
Conclusion

Applicants believe that all of the claims pending in the application (claims 1-13) are allowable over the cited art. Therefore, Applicants respectfully request that the Examiner reconsider the application and grant an early allowance. An Appendix in compliance with 37 C.F.R. §1.121 containing marked-up versions of the amendments made to the claims follows this page. Should the Examiner have any questions, Applicants' attorney may be contacted at the telephone number listed below.

Respectfully submitted,

KLAAS, LAW, O'MEARA & MALKIN, P.C.

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Nellie C. Kaufman, Attorney for Applicants
Registration No. 34,689
KLAAS, LAW, O'MEARA & MALKIN, P.C.
1999 Broadway, Suite 2225
Denver, Colorado 80202
(303) 298-9888

APPENDIX

Submitted herewith in compliance with 37 C.F.R. §1.121 are marked-up versions of the amendments made to the above-identified patent application. Additions are indicated by underlining, and deletions are shown in brackets.

In The Claims

1. (once amended) A pallet for supporting a load of packages comprising multiple layers, said pallet comprising:

- a) a support structure comprising flexible film wrapped around at least one of said multiple layers around a first axis and a second axis, said first axis being generally perpendicular to said second axis, whereby said flexible film covers at least a majority of said at least one of said multiple layers; and
- b) a disposable/recyclable base adhered to said flexible film which is adapted to receive forks of a forklift.

8. (once amended) A method for producing a pallet for supporting a load of packages comprising multiple layers, said method comprising:

- a) wrapping at least one of said multiple layers with a flexible film around a first axis;
- b) wrapping said at least one of said multiple layers with a flexible film around a second axis which is generally perpendicular to said first axis;
- c) adhering a disposable/recyclable base to said flexible film.

13. (once amended) A pallet for supporting a load of packages comprising multiple layers, said pallet comprising:

- a) support means for supporting said load of packages, said support means comprising flexible film wrapped around at least one of said multiple layers around a first axis and a second axis, said first axis being generally perpendicular to said second axis, whereby said flexible film covers at least a majority of said at least one of said multiple layers; and
- b) disposable/recyclable base means adhered to said support means for receiving forks of a forklift.